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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1945

No. 187

CHERRY COTTON MILLS, INC., PETITIONER,

vs.

THE UNITED STATES

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

PETITION FOR CERTIORARI FILED JULY 2, 1945.

CERTIORARI GRANTED OCTOBER 15, 1945.

SUPREME COURT OF THE UNITED STATES

OUTOBER TERM, 1945

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ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS

INDEX

	Original	Print
Record from Court of Claims	1	1
Petition	1	1
Defendant's answer and counterclaim	5	49
Plaintiff's reply to counterclaim	15	9
Argument and submission of case	17	9
Special findings of fact	19	9
Conclusion of law	. 24	14
Opinion of the court by Madden J	24	15
Stipulation relative to computation and entry of judg-		
ment	29	19
Order of the court entering judgment	33	26
Clerk's certificate(omitted in printing)	37	
Order allowing certiorari	-38	21

No. 45885

CHERRY COTTON MILLS, INC., Plaintiff,

V.

THE UNITED STATES OF AMERICA, Defendant

Petition-Filed June 12, 1943

To the Honorable, the Chief Justice and Judges of the Court of Claims:

The above-named plaintiff, Cherry Cotton Mills, Inc., by this its petition respectfully shows:

- 1. That the plaintiff is a corporation organized and existing under the laws of the State of Alabama and having its office and principal place of business at Florence, Alabama.
 - 2. That the plaintiff, a cotton processor, filed a claim for refund of processing and floor stock taxes paid under the Agricultural Adjustment Act, claim No. F 2859, with the Collector of Internal Revenue for the Collection Dis-[fol. 2] trict of Alabama, which was allowed by the Commissioner of Internal Revenue in the amount of \$3,104.87 on Schedule No. PT (IT:UE) 458; a final closing agreement, under Section 506 of the Revenue Act of 1936, was accepted and signed by the Acting Commissioner of Internal Revenue February 5, 1942, and by letter dated April 29, 1942, that plaintiff was advised by Deputy Commissioner Timothy C. Mooney that, unless the plaintiff is indebted to the United States Government, a check would issue, and that the Treasurer of the United States issued check No. 164745 payable to the plaintiff in the said amount of \$3,104.87, which was mailed to the plaintiff by Deputy Commissioner D. S. Bliss July 24, 1942, with Treasury Department form No. 7801 B.
 - 3. That payment of the check was stopped and the plaintiff was so notified by telegram dated August 26, 1942, from the Chief Dispersing Officer, the Comptroller General of the United States, having in his advice of payment of set-

tlement to accompany check, under date of August 11, 1942, certified:

I have certified that there is due you from the United States, payable from the appropriation(s) indicated, the sum of—

THREE THOUSAND ONE HUNDRED FOUR AND 87/100 DOL-LARS (\$3,104.87)

on account of refund of processing and floor stock taxes as per claim No. F 2859, Dist. of Alabama, Sch. No. PT(ITUE)458.

209/30909 Refunds and Payments of Processing and Related Taxes, Bureau of Internal Revenue, 1939-1943.

Check to issue in favor of:

Reconstruction Finance Corporation, Washington, D. C.

- [fol. 3] The amount of the refund is applied to partially liquidate an indebtedness of the Cherry Cotton Mills, Florence, Alabama, in the amount of \$5,963.50, plus interest at 5% from July 12, 1939, due the Reconstruction Finance Corporation.
- 4. That the indebtedness of the plaintiff to the Reconstruction Finance Corporation, a body corporate, is not a claim or demand by the Government of the United States and the said sum of \$3,104.87 is erroneously applied to the indebtedness to the Reconstruction Finance Corporation, and is illegally withheld from the plaintiff.
- 5: That the plaintiff is entitled to the payment of the refund of the said \$3,104.87 without credit or set-off.
- 6. No action other than as aforesaid has been had on this claim in Congress or in any of the Departments. The plaintiff has at all times borne true allegiance to the Government of the United States. The said plaintiff has never in any way voluntarily aided, abetted, or given encouragement to rebellion against said Government. The said plaintiff is and has always been the sole and absolute owner of the claim here presented. It has made no transfer nor assignment of said claim nor of any part thereof nor of any interest therein. It is justly entitled to the amount claimed from the United States of America.

7. The plaintiff believes the facts as herebefore stated to be true.

Wherefore, the plaintiff prays judgment against the [fol. 4] United States of America upon the facts and law for Three Thousand, One Hundred Four and 87/100 (\$3,104.87) Dollars.

Cherry Cotton Mills, Inc., by J. T. Flagg, President; Theodore B. Benson, 817 Southern Building, Wash-

ington, D. C., Counsel for Plaintiff.

Duly sworn to by P. T. Flagg. Jurat omitted in printing.

[fol. 5] On February 2, 1944, on motion made therefor, and allowed by the court, defendant filed its answer and counterclaim, which is as follows:

Defendant's Answer and Counterclaim—Filed February 2, 1944

Now comes the United States of America, by its Assistant Attorney General, leave of the Court first having been had and obtained, and answering the petition filed in the above-entitled cause, alleges as follows:

Answer

- 1. Upon information and belief, it admits the allegations contained in paragraph 1 of the petition.
- 2. It admits the allegations contained in paragraph 2 of the petition, with the exception of the allegation that Check No. 164,745 of the Treasurer of the United States was mailed to plaintiff on July 24, 1942 which allegation is denied.
- 3. It admits the allegations contained in paragraph 3 of the petition.
- [fol. 6] 4. It denies the allegations contained in paragraph 4 of the petition, with the exception of the allegation that the Reconstruction Finance Corporation is a body corporate, which allegation is admitted.
- 5. It denies the allegations contained in paragraph 5 of the petition.

- 6. It is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6 of the petition, with the exception of the allegation that plaintiff is justly entitled to the amount claimed from the United States of America, which allegation is denied.
- 7. It denies each and every other allegation contained in the petition.

And, the United States of America, leave of the Court first having been had and obtained, further answering the petition filed in the above-entitled cause, by way of set-off or counterclaim, alleges as follows:

Counterclaim

- 1. Pursuant to an Application, dated October 7, 1935, by plaintiff to The First National Bank of Florence, Florence, Alabama (hereinafter called "the Bank"), for a loan in the principal amount of not exceeding \$110,000, to be evidenced by a Note secured by certain collateral, with the understanding that the Bank would request the Reconstruction [fol. 7] Finance Corporation (hereinafter called "the R. F. C.") to agree to purchase a participation in said Note, the Bank agreed to lend plaintiff not exceeding \$110,000, to be distursed to plaintiff in deferred portions as requested of the Bank by plaintiff.
- 2. On January 30, 1936, for value received, plaintiff executed a Note, payable to the Bank, promising to pay \$110,000, with interest at 5 per cent per annum, payable semi-annually, with certain collateral as security and containing, inter alia, provisions for acceleration of maturity of said Note and power of sale upon default of plaintiff with respect to the terms and conditions of said Note.
- 3. Ca January 30, 1936, plaintiff entered into a Mortgage, with the Bank as mortgagee, which recites that plaintiff is indebted to the Bank in the principal sum of \$110,000, with interest at 5 per cent per annum, payable semi-annually, as evidenced by plaintiff's Note of January 30, 1936, and contains, inter alia, provisions for acceleration of the maturity of the debt and for foreclosure and power of sale by the mortgagee upon default of plaintiff with respect to the terms and conditions of said Note and said Mortgage,

with power in said mortgagee to bid at such sale and purchase, if the highest bidder, and power in \$110,000, including the 66% per cent participation gage or the auctioneer, upon such sale to execute a foreclosure deed in [fol. 8] the name of plaintiff, said Mortgage being recorded in Vol. 259, pages 248-256, Lauderdale County, Alabama.

- 4. On or about February 5, 1936, pursuant to the Bank's Application to the R. F. C. for an Agreement to Purchase a Participation in plaintiff's Note of January 30, 1936, the R. F. C. entered into a Participation Agreement with the Bank, providing that, upon the making of the loan, not in excess of \$110,000, to plaintiff by the Bank, the R. F. C. agrees to purchase a 66% per cent interest in plaintiff's Note, evidencing such \$110,000 loan to plaintiff by the Bank, on condition, inter alia, that the R. F. C. shall receive said Note, endorsed without recourse by the Bank to the R. F. C., and transfer of the Mortgage of January 30, 1936, as required by Section III of a Resolution of October 16, 1935, of the Executive Committee of the R. F. C.
 - 5. On February 5, 1936, as required by the Participation Agreement of the R. F. C., the Bank endorsed plaintiff's said Note, which was delivered to the R. F. C., and also executed a Transfer of Mortgage, reciting that the Bank, for value received, grants, bargains, sells, conveys, assigns, and delivers to the R. F. C., its successors and assigns, all its right, title, and interest in the Mortgage entered into by plaintiff on January 30, 1936, together with the debt there secured, the notes therein described, and the land and property therein conveyed, to have and to hold [fol. 9] unto the R. F. C., its successors and assigns, forever, said Transfer of Mortgage being recorded in Vol. 260, pages 441-442, Lauderdale County, Alabama.
 - 6. On March 2, 1936, following advice of a Certificate of February 8, 1936, stating that all documents, including said endorsed Note and Transfer of Mortgage, had been received from the Bank by the Custodian of the R. F. C. in satisfactory form, the R. F. C. executed a Certificate of Interest, reciting that, as provided in the Participation Agreement, the Bank has made the loan to plaintiff, as evidenced by plaintiff's Note, and the R. F. C. has purchased the participation in said Note and has received delivery of said Note

and the collateral and that the Bank has retained an interest in said Note and the collateral so delivered, in a principal amount equal, at any given time, to 3313 per cent of the unpaid principal amount of said Note disbursed until such time.

- 7. By on or about August 15, 1936, all of the principal amount of the loan not exceeding \$110,000 made by the Bank to plaintiff, to wit, \$110,000, including the 66% per cent participation of the R. F. C. therein, was disbursed by the Bank to and received by plaintiff.
- 8. On March 25, 1939, upon and after default of plaintiff with respect to the terms and conditions of its Note and Mortgage of January 30, 1936, and after demand by the [fol. 10] R. F. C. that plaintiff comply therewith, and pursuant to an Authorization of February 13, 1939, of the Executive Committee of the R. F. C. to accelerate the maturity of plaintiff's said Note and to take steps to foreclose all hypothecations of collateral securing the loan evidenced by said Note, the R. F. C. served due and proper Notice of Acceleration of said Note on plaintiff, receipt thereof being acknowledged by J. T. Flagg, plaintiff's President, on said date.
- 9. On July 12, 1939, there was due and owing from plaintiff to the R. F. C. and the Bank \$108,194.06, of which 66% per cent or \$72,129.38 was the share of the R. F. C. and 33% per cent or \$36,064.68 was the Bank's share.
- 10. On July 12, 1939, foreclosure of plaintiff's said Mortgage of January 30, 1936, was instituted by the R. F. C. in the joint names of the R. F. C. and the Bank and, at the foreclosure sale, the R. F. C. and the Bank became joint purchasers of the property listed as collateral security for plaintiff's debt; the bid and purchase price being the sum of \$100,000, and that, as the result of such foreclosure sale, the R. F. C. received a 66% per cent or \$66,666.66 interest and the Bank received a 331/3 per cent or \$33,333.33 interest in the acquired property, as shown by a Foreclosure Deed executed in behalf of plaintiff by Crampton Harris as Auctioneer and Attorney in Fact on July 17, 1939, and [fol. 11] recorded, on July 18, 1939, in Vol. 288, pages 206-212, Lauderdale County, Alabama.

- 11. Expenses incidental to said foreclosure sale, which were properly disbursed by the R. F. C. and the Bank and are properly chargeable to plaintiff under the terms and conditions of its Note and Mortgage of January 30, 1936, were incurred by the R. F. C. and the Bank in the sum of \$751.19 and plaintiff has failed to reimburse the R. F. C. and the Bank therefor.
- 12. On July 12, 1939, after crediting plaintiff with the \$100,000 purchase price paid for its property by the R. F. C. and the Bank on the foreclosure sale, there remained due and owing from plaintiff to the R. F. C. and the Bank \$8,945.25, of which 66% per cent or \$5,963.51 was the share of the R. F. C. and 33\frac{1}{3} per cent or \$2,981.74 was the Bank's share.
- 13. On February 5, 1942, following the filing of plaintiff's claim with the Coliector of Internal Revenue for the District of Alabama for a refund of processing and floor stock taxes paid by it under the Agricultural Adjustment Act, which was allowed by the Commissioner of Internal Revenue in the amount of \$3,104.87, a final closing agreement, under Section 506 of the Revenue Act of 1936, was accepted by the Acting Commissioner of Internal Revenue and, by letter of April 29, 1942, Deputy Commissioner of Internal [foi. 12] Revenue Mooney advised plaintiff that, unless plaintiff is indebted to the United States Government, a check for such refund would issue to it.
 - 14. On or about August 17, 1942, the Treasurer of the United States issued Check No. 164,745, payable to plaintiff in the amount of \$3,104.87, which check was stopped and recalled from plaintiff by telegram, dated August 26, 1942, of the Chief Disbursing Officer, Treasury Department, who informed plaintiff that the check should have been drawn to the order of the R. F. C. to liquidate partially the indebtedness of plaintiff to the R. F. C.
 - 15. On September 2, 1942, after the return of said check by plaintiff, a reissued check, bearing the same number, date, and amount and drawn to the order of the R. F. C., was transmitted to the R. F. C. by the Treasurer of the United States, said reissued check being in accord with Certificate of Settlement No. 0690274, dated August 11, 1942, of the General Accounting Office, which directed issuance of the check in settlement of plaintiff's claim for

the refund to the R. F. C. to liquidate partially the indebtedness of plaintiff in the amount of \$5,963.51, plus interest at 5 per cent from July 12, 1939, due the R. F. C.

16. On September 2, 1942, the R. F. C. allowed plaintiff a credit or deduction of \$3,104.87 in its accounts relating to plaintiff's indebtedness to the R. F. C., leaving now due [fol. 13] and owing to the R. F. C. from plaintiff a sum to be computed, consisting of a principal balance of \$2,858.64 plus interest at 5 per cent per annum on \$5,963.51 from July 12, 1939, to September 2, 1942, and also interest at 5 per cent per annum on \$2,858.64 from September 2, 1942, to date, no part of which sum to be computed has been paid to the R. F. C. by plaintiff, despite demand made on plaintiff for such payment by the R. F. C.

17. The R. F. C. is a body corporate, created by the Act of January 22, 1932 (47 Stat. 5), as amended, whose entire capital stock is owned by the United States of America, whose management is vested by said Act in a board of directors consisting of five persons appointed by the President of the United States by and with the advice and consent of the Senate, and which is a constituent part of the Government of the United States of America.

18. Plaintiff's indebtedness to the R. F. C. is a claim or demand of the United States of America and said sum of \$3,104.87 claimed by plaintiff is legally withheld from it and properly applied to its indebtedness to the R. F. C., which is entitled to said sum of \$3,104.87 as a credit or set-off to plaintiff's indebtedness to it.

Wherefore, the United States of America prays judgment that the petition be dismissed and also judgment against plaintiff on its counterclaim in the sum to be computed, [fol. 14] consisting of \$2,858.64 plus interest at 5 per cent per annum on \$5,963.51 from July 12, 1939, to September 2, 1942, and also interest at 5 per cent per annum on \$2,858.64 from September 2, 1942, to date of judgment herein, together with interest at 6 per cent per annum on such computed sum until paid.

D Francis M. Shea, Assistant Attorney General.

Julian R. Wilheim, Attorney for the United States.

[fol. 15] PLAINTIFF'S REPLY TO COUNTERCLAIM-Filed February 23, 1944

Now comes the plaintiff, by its attorney and replying to the defendant's counterclaim admits, denies and alleges:

1 to 16. The plaintiff admits the allegations contained in paragraphs 1 to 16, inclusive, save and except the allegation, or inference from an allegation, that the sum here sued for was pledged as security for the said note or mortgage, which the plaintiff denies.

17. The plaintiff admits the allegations contained in paragraph 17, with the exception of the allegation that the R. F. C. is a constituent part of the Government of the United States of America, which allegation is denied.

18. The plaintiff denies the allegations contained in para-

graph 18 of the counterclaim.

[fol. 16] Wherefore, the plaintiff prays that the defendant's counterclaim be denied and that judgment be entered for the plaintiff in the sum of \$3,104.87.

Cherry Cotton Mills, by Theodore B. Benson, Attorney, 817 Southern Building, Washington, D. C.

Duly sworn to by Theodore B. Benson. Jurat omitted in printing.

[fols. 17-18] ARGUMENT AND SUBMISSION OF CASE

On October 11, 1944, the case was argued and submitted on merits by Mr. T. B. Benson for plaintiff, and by Mr. E. E. Ellison for defendant,

Special Findings of Fact, Conclusion of Law, and Opinion of the Court by Madden, Judge-Filed [fol. 19] March 5, 1945

Mr. Theodore B. Benson, for the plaintiff.

Mr. E. E. Eliison, with whom was Mr. Assistant Attorney General Francis M. Shea, for the defendant. Messrs. Julian R. Wilhelm, George E. Heidlebaugh, and S. R. Gamer were on the brief.

This case having been heard by the Court of Claims, the Court, upon a stipulation entered into by the parties, makes the following

SPECIAL FINDINGS OF FACT

- 1. Plaintiff is, and at all times hereinafter mentioned was, a corporation organized and existing under the laws of the State of Alabama, having its office and principal place of business at Florence, Alabama.
- 2. Pursuant to an Application, dated October 7, 1935, by plaintiff to The First National Bank of Florence, Florence, Alabama (hereinafter called "the Bank") for a loan in the principal amount of not exceeding \$110,000, to be evidenced by a note secured by certain collateral, with the understanding that the Bank would request the Reconstruction Finance Corporation (hereinafter called "the R. F. C.") to agree to purchase a participation in said note, the Bank agreed to lend plaintiff not exceeding \$110,000, to be disbursed to plaintiff in deferred portions as requested of the Bank by plaintiff. The R. F. C. is a body corporate, created by the Act of January 22, 1932 (47 Stat. 5), as amended, whose entire capital stock is owned by the United States of America and whose management is vested by said Act in a board of directors consisting of five persons appointed by [fol. 20] the President of the United States by and with the advice and consent of the Senate.
- 3. On January 30, 1936, for value received, plaintiff executed a note, payable to the Bank, promising to pay \$110,000, with interest at 5 per cent per annum, payable semi-annually, with certain collateral as security and containing, inter alia, provisions for acceleration of maturity of said note and power of sale upon default of plaintiff with respect to the terms and conditions of said note.
- 4. On January 30, 1936, plaintiff entered into a mortgage with the Bank as mortgagee, which recites that plaintiff is indebted to the Bank in the principal sum of \$110,000, with interest at 5 per cent per annum, payable semi-annually, as evidenced by plaintiff's note of January 30, 1936, and contains, inter alia, provisions for acceleration of the maturity of the debt and for foreclosure and power of sale by the mortgagee upon default of plaintiff with respect to the terms and conditions of said note and said mortgage, with power in said mortgagee to bid at such sale

- and purchase, if the highest bidder, and power in said mortgagee or owner of the debt and the mortgage, or the auctioneer, upon such sale, to execute a foreclosure deed in the name of plaintiff, said mortgage being recorded in Vol. 259, pages 248-256, Lauderdale County, Alabama.
- 5. On or about February 5, 1936, pursuant to the Bank's application to the R. F. C. for an agreement to purchase a participation in plaintiff's note of January 30, 1936, the R. F. C. entered into a Participation Agreement with the Bank, providing that, upon the making of the loan, not in excess of \$110,000, to plaintiff by the Bank, the R. F. C. agreed to purchase 6673 percent interest in plaintiff's note, evidencing such \$110,000 loan to plaintiff by the Bank, on condition, inter alia, that the R. F. C. should receive said note, endorsed without recourse by the Bank to the R. F. C., and transfer of the mortgage of January 30, 1936, as required by Section III of a Resolution of October 16, 1935, of the Executive Committee of the R. F. C.
 - 6. On February 3, 1936, as required by the Participation Agreement of the R. F. C., the Bank endorsed plaintiff's said note, which was delivered to the R. F. C., and also exfol. 21] ecuted a Transfer of Mortgage, reciting that the Bank, for value received, "grants, bargains, sells, conveys, assigns, and delivers" to the R. F. C., its successors and assigns, all its right, title, and interest in the mortgage entered into by plaintiff on January 30, 1936, together with the debt there secured, the notes therein described, and the land and property therein conveyed, to have and to hold unto the R. F. C., its successors and assigns, forever, said Transfer of Mortgage being recorded in Vol. 260, pages 441-442, Lauderdale County, Alabama.
 - 7. On March 2, 1936, following advice of a certificate of February 3, 1936, executed by the Federal Reserve Bank, Birmingham, Alabama, as Custodian of the R. F. C. and stating that all documents, including the endorsed note and Transfer of Mortgage, had been received from the Bank by said Custodian in satisfactory form, the R. F. C. executed, and delivered to the Bank, a Certificate of Interest, reciting that, as provided in the Participation Agreement, the Bank had made the loan to plaintiff, as evidenced by plaintiff's note, and the R. F. C. had purchased the participation in said note and had received delivery of said note and the col-

lateral and that the Bank had retained an interest in said note and the collateral so delivered, in a principal amount equal, at any given time, to 33½ percent of the unpaid principal amount of said note disbursed until such time.

- 8. By on or about August 15, 1936, all of the principal amount of the loan not exceeding \$110,000 made by the Bank to plaintiff, to wit, \$110,000, including the 66% percent participation of the R. F. C. therein, was disbursed by the Bank to and received by plaintiff.
- 9. On March 25, 1939, upon and after default of plaintiff with respect to the terms and conditions of its note and mortgage of January 30, 1936, and after demand by the R. F. C. that plaintiff comply therewith, and pursuant to an Authorization of February 13, 1939, of the Executive Committee of the R. F. C. to accelerate the maturity of plaintiff's said note, and to take steps to foreclose all hypothecations of collateral securing the loan evidenced by said note, the R. F. C. served due and proper Notice of Acceleration of [fol. 22] said note on plaintiff, receipt thereof being acknowledged by J. T. Flagg, plaintiff's president, on said date.
- .10. On July 12, 1939, there was due and owing from plaintiff to the R. F. C. and the Bank \$108,194.06, of which 66% percent or \$72,129.38 was the share of the R. F. C. and 331/3 percent or \$36,064.68 was the Bank's share.
- 11. On July 12, 1939, foreclosure of plaintiff's mortgage of January 30, 1936, was instituted by the R. F. C. in the joint names of the R. F. C. and the Bank and, at the foreclosure sale, the R. F. C. and the Bank became joint purchasers of the property listed as collateral security for plaintiff's debt, the bid and purchase price being the sum of \$100,000, and as the result of such foreclosure sale, the R. F. C. received a 66% percent or \$66,666.67 interest and the bank received a 33½ percent or \$33,333.33 interest in the acquired property, as shown by a Foreclosure Deed executed in behalf of plaintiff by Crampton Harris as Auctioneer and Attorney in Fact on July 17, 1939, and recorded, on July 18, 1939, in Vol. 288, pages 206-212, Lauderdale County, Alabama.
- 12. Expenses incidental to said foreclosure sale, which were properly disbursed by the R. F. C. and the Bank and

are properly chargeable to plaintiff under the terms and conditions of its note and mortgage of January 30, 1936, were incurred by the R. F. C. and the Bank in the sum of \$751.19 and plaintiff has failed to reimburse the R. F. C. and the Bank therefor.

- 13. On July 12, 1939, after crediting plaintiff with the \$100,000 purchase price paid for its property by the R. F. C. and the Bank on the foreclosure sale, there remained due and owing from plaintiff to the R. F. C. and the Bank \$8,945.25, representing the unpaid balance of said Note plus said expenses incidental to said foreclosure sale, of which 66% percent or \$5,963.51 was the share of the R. F. C. and 331/3 percent or \$2,981.74 was the Bank's share. Plaintiff is, and since July 12, 1939, has been indebted to the R. F. C. in the amount of \$5,963.51 plus interest at 5 percent per annum from July 12, 1939.
- 14. On February 5, 1942, following the filing of plaintiff's claim with the Collector of Internal Revenue for the Dis-[fol. 23] trict of Alabama for a refund of processing and floor stock taxes paid by it under the Agricultural Adjustment Act, which was allowed by the Commissioner of Internal Revenue in the amount of \$3,104.87, a final closing agreement, under Section 506 of the Revenue Act of 1936, was accepted by the Acting Commissioner of Internal Revenue and, by letter of April 29, 1942, Deputy Commissioner of Internal Revenue Mooney advised plaintiff that, unless plaintiff was indebted to the United States Government, a check for such refund would issue to it.
- 15. On or about August 17, 1942, the Treasurer of the United States issued check No. 164,745, payable to plaintiff in the amount of \$3,104.87, which check was stopped and recalled from plaintiff by telegram, dated August 26, 1942, of the Chief Disbursing Officer, Treasury Department, who informed plaintiff that the check should have been drawn to the order of the R. F. C. to liquidate partially the indebtedness of plaintiff to the R. F. C.
- 16. On September 2, 1942, after the return of said check by plaintiff, a reissued check, bearing the same number, date, and amount and drawn to the order of the R. F. C., was transmitted to the R. F. C. by the Treasurer of the United States, said reissued check being in accord with Certificate of Settlement No. 0690274, dated August 11, 1942,

of the General Accounting Office, which directed issuance of the check in settlement of plaintiff's claim for the refund to the R. F. C. to liquidate partially the indebtedness of plaintiff in the amount of \$5,963.51, plus interest at 5 percent from July 12, 1939, due the R. F. C.

17. On September 2, 1942, the R. F. C. allowed plaintiff a credit or deduction of \$3,104.87 in its accounts relating to plaintiff's indebtedness to the R. F. C. Plaintiff's said claim for a refund of processing and floor stock taxes paid by it under the Agricultural Adjustment Act was not at any time pledged, in whole or in part, by it as collateral security for its note and mortgage of January 30, 1936.

18. If the defendant was entitled to withhold said sum of \$3,104.87 from plaintiff and to apply it as a credit or set-off to plaintiff's indebtedness to the R. F. C., the defendant is entitled to judgment against plaintiff for the sum of \$2,858.64 plus interest at 5 percent per annum on \$5,963.51 from [fol. 24] July 12, 1939, to September 2, 1942, and also interest at 5 percent per annum on \$2,858.64 from September 2, 1942, to date of judgment herein, together with interest at 6 percent per annum on such computed sum until the judgment is paid.

Conclusion of Law

Upon the foregoing special findings of fact, which are made a part of the judgment herein, the court concludes, as a matter of law, that the plaintiff is not entitled to recover and its petition is therefore dismissed.

The court further concludes that the United States is entitled to recover against the plaintiff on its counterclaim the sum of \$2,858.64, with interest.

It is therefore adjudged and ordered that the defendant recover judgment against plaintiff in the sum of \$2,858.64 plus interest at 5 percent per annum on \$5,963.51 from July 12, 1939, to September 2, 1942, and also interest at 5 percent per annum on \$2,858.64 from September 2, 1942, to date of judgment herein, together with interest at 6 percent per annum on such computed sum until the judgment is paid. The entry of judgment is suspended to await the filing of a computation by the parties of the amount of interest to be included in the judgment.

Judgment is also rendered against the plaintiff in favor of the defendant for the cost of printing the record in this case,

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the amount thereof to be ascertained by the clerk and collected by him according to law.

OPINION

Madden, Judge, delivered the opinion of the court:

The plaintiff in 1936 made an application to The First National Bank of Florence, Florence, Alabama, for a loan of \$110,000, to be evidenced by a note secured by certain collateral, with the understanding that the bank would request the Reconstruction Finance Corporation to agree to purchase a participation in the note. As a result of the negotiations, as set forth at length in the special findings of fact, the plaintiff executed a note for \$110,000,00, with interest at 5 percent per annum and mortgaged certain securities [fol. 25] therefor. The bank made the loan secured by the mortgage and the R. F. C. purchased a two-thirds interest in the loan. There was a default by the plaintiff and the mortgage was foreclosed in 1939, and the mortgaged assets were bid in by the bank and the R. F. C. for \$100,000,00, and the R. F. C. received a sixty-six and two-thirds interest and the bank the other thirty-three and one-third interest in those assets. There remained due to the R. F. C. and the bank in their respective interests of two-thirds and onethird, the sum of \$8,945.25 - \$5,963.51 to the R. F. C. and \$2,981.74 to the bank.

The plaintiff had paid processing and floor stock taxes as a cotton processor under the Agricultural Adjustment Act to the Collector of Internal Revenue for the District of Alabama in the sum of \$3,104.87. The plaintiff, after the Agricultural Adjustment Act was declared unconstitutional, filed a claim for this amount, and a check dated August 17, 1942, was issued to it in payment of its claim. This check was stopped by the Disbursing Officer of the Treasury and, under the direction of the General Accounting Office, a check was issued to the R. F. C. in partial liquidation of the indebtedness of the plaintiff to the R. F. C., leaving a balance of \$2,858.64 remaining due to the R. F. C. upon the debt of \$5,963.51 which the plaintiff owed it.

No part of the processing and floor stock tax had been included in the collateral given to the bank or the R. F. C. to secure the original loan. Whether or not the plaintiff had paid the Florence Bank the \$2,981.74 which it had owed the

Bank since 1939, when this set off was made, or has paid it since that time, we are not informed.

The foregoing recital shows the following facts: In 1942 the plaintiff was indebted to the R. F. C. in the sum of \$5,963.51, and the Government was indebted to the plaintiff in the sum of \$3,104.87. A check to pay the latter debt was issued by the Government, but, before it was cashed, the plaintiff's debt to the R. F. C. came to the attention of the officers of the Government, and the check was recalled from the plaintiff and another check, for the same amount, payable to the R. F. C. was issued to and collected by the R. F. C. It credited the plaintiff with the payment of

\$3,104.87 upon the plaintiff's debt to it.

1fol. 261 We think that the plaintiff should not, in these circumstances, have a judgment against the Government. The effect of the payment of such a judgment would be to cancel the credit which the R. F. C. has given the plaintiff upon its debt to it, and restore the plaintiff's debt to the R. F. C. to its former amount, \$5,963.51. The plaintiff's net worth would be exactly the same as it is now, and, since its debt to the R. F. C. is long past due, it would be, as it has long since been, under a duty to pay the R. F. C. not only the \$3,104.87 which it would recover from the Government, but enough more to discharge its debt in full to the R. F. C. If it did its duty in this regard, the \$3,104.87 would then be, in effect, where it is now, i.e. among the assets of the United States. So our exercise of our functions would have been a sheer waste of the time and energy of ourselves and of those who have participated in this litigation on the part of the plaintiff and the Government. Only by assuming that the plaintiff will take the judgment money and will not pay its debt to the Government could we say that a judgment for the plaintiff had accomplished anything other than circumlocution, and, on this assumption, our accomplishment would seem to have been less than worthy of our effort.

The R. F. C. is an agent of the Government, a device for accomplishing the Government's purposes with the Government's money. The text of the statute creating the R. F. C., 47 Stat. 5, 15 U. S. C. 601-617, makes this plain. The Government's assets and credits stand behind the R. F. C.'s obligations, and the R. F. C.'s losses are the Government's losses. Debts owing to the R. F. C. are owed to it as agent and trustee for the Government. We use the word trustee since the R. F. C. does have the legal capacities of a separate

legal person, to own property and to sue and be sued. But these powers and capacities are held by it in trust for the benefit of one sole beneficiary, the Government. Looking through the trust, the assets and claims held by the R: F. C. are, in substance and in equity, assets and claims of the Government which are kept, for convenience, in a different receptacle from the one in which the Government keeps

most of its money, viz, the Treasury.

Cases holding that the R. F. C. is liable for costs, as other [fol. 27] litigants are, Reconstruction Finance Corporation v. J. G. Menihan Corp., 312 U. S. 81, or that the Federal Housing Administration is subject to garnishment under state law for wages due to an employee, Federal Housing Administration v. Burr, 309 U. S. 242, are not of significance in the solution of our problem. The Supreme Court in those cases was only deciding what Congress meant when it endowed Government corporations with the capacity to sue and be sued. It held that Congress intended that they could be sued like private persons, and that sovereign immunity from suit was waived. But no court has decided that Congress has shown any intention that the United States must pay out money to one who is indebted to it. through its agent and trustee, in a greater amount on a debt past due. That would not be a waiver of sovereign immunity, but a subjection of the sovereign's finances to risks and inconveniences to which no private person is by law subjected.

We do not regard as material the part which the General Accounting Office played in the transactions here in question. We think it was the duty of someone, on behalf of the Government, to see that this set off was made. Whether the statute defining the functions of the Comptroller General lodged that duty there, or not, is a matter which would seem to be no concern of the plaintiff. It had no right to collect money from the United States when it owed a past due debt to the United States. How the Government, inside its own organization, took care that its right of set-off should not be overlooked, in its multiplicity of transactions, is not material. In short, we think that the money for which the plaintiff sues is now where it rightfully and lawfully belongs,

and should stay there.

We have given the Government a judgment on its counterclaim for the balance, above the \$3,104.87 already set off and credited to the plaintiff, which the plaintiff owes the R. F. C. The R. F. C. could not have sued in this court for that balance. But the plaintiff has in this court sued the R. F. C.'s principal and beneficiary, the United States, so we have the real parties in interest before us. We see no reason why we should not, in the rational and economical administration of justice, dispose of their claims completely. When the [fol. 28] plaintiff pays the United States the judgment which we have given the United States on its counterclaim, the plaintiff will, of course, have a complete defense against any claim by the R. F. C., and will not be concerned about how the Treasury and the R. F. C. record the transaction on their books.

In the case of Crane, et al., Receivers, v. United States, 73 C. Cls. 677, certiorari denied 287 U. S. 601, this court allowed the United States to recover a judgment on a counterclaim against a plaintiff who sued for the refund of taxes, and who had given a bond to the United States Shipping Board Emergency Fleet Corporation. It held that whether or not the Fleet Corporation was an entity separate from the United States was immaterial. The contract which the bond was given to secure, recited that the Fleet Corporation was representing and acting for and on behalf of the United States. In the case of John Morrell and Company v. United States, 89 C. Cls. 167, this court held that the fact that a contract made by the Federal Surplus Relief Corporation did not disclose that it was acting as the agent of the United States, was immaterial since the facts concerning its agency were apparent from the statute creating it, and from the known purpose of its organization. We think those cases were rightly decided.

The defendant may recover upon its counterclaim. Entry of judgment will be suspended to await the computation of the amount of the interest to be included in the judgment.

It is so ordered,

Littleton, Judge; and Whitaker, Judge, concur. Whaley, Chief Justice, dissents.

Jones, Judge, took no part in the decision of this case.

[fols. 29-30] STIPULATION RELATIVE TO COMPUTATION AND ENTRY OF JUDGMENT

On March 17, 1945, the parties filed a stipulation in accordance with the Court's decision and opinion of March 5, 1945, which is as follows:

Stipulation

For the purpose of enabling the computation and entry of judgment to be made in the above-entitled cause in accordance with the Court's decision and opinion of March 5, 1945 relating to said cause, it is hereby stipulated and agreed by and between the parties hereto, by their respective attorneys, as follows:

- 1. Interest at 5 per cent per annum on \$5,963.51 from July 12, 1939 to September 2, 1942 amounts to \$937.82.
- 2. Interest at 5 per cent per annum on \$2,858.64 from September 2, 1942 to April 2, 1945 amounts to \$369.27.
- 3. The total amount of interest to April 2, 1945, to be included in said judgment, is \$1,307.09.
- 4. The total amount of the judgment to be recovered herein by defendant against plaintiff is \$4,165.73, as computed pursuant to the court's decision of March 5, 1945 herein.

[fols. 31-32] 5. If the Court shall fail to enter judgment herein on April 2, 1945, this stipulation shall be void and of no effect whatsoever and a new stipulation based on a new computation to conform with any other date of entry of judgment herein selected by the Court shall be made by the parties bereto and submitted to the Court for the purpose hereinbefore stated.

Theodore B. Benson, Attorney for Plaintiff. Francis M. Shea, Assistant Attorney General; Julian R. Wilheim, Attorney, Attorneys for the United States of America.

[fols. 33-34] Order of the Court Extering Judgment

At a Court of Claims held in the City of Washington on the 2nd day of April, A. D., 1945, the Court filed an order entering judgment which is as follows:

Order

This case comes before the court on a stipulation of the parties, and it appearing that on March 5, 1945, the court filed special findings of fact with an opinion dismissing the petition and entering judgment against the plaintiff in favor of the defendant on its counterclaim with interest thereon, but suspended the entry of judgment to await the filing of a computation by the parties showing the exact amount due from the plaintiff in accordance with the court's decision; and it further appearing that on March 17, 1945, a stipulation was filed signed on behalf of the plaintiff by Theodore B. Benson, and on behalf of the defendant by Assistant Attorney General Francis M. Shea, in which it is stated that

- it is hereby stipulated and agreed by and between the parties hereto, by their respective attorneys, as follows:
- 1. Interest at 5 per cent per annum on \$5,963.51 from July 12, 1939 to September 2, 1942 amounts to \$937.82.
- 2. Interest at 5 per cent per annum on \$2,858.64 from September 2, 1942 to April 2, 1945 amounts to \$369.27.
- [fols, 35-36] 3. The total amount of interest to April 2, 1945, to be included in said judgment, is \$1,307.09.
- 4. The total amount of the judgment to be recovered herein by defendant against plaintiff is \$4,165.73, as computed pursuant to the Court's decision of March 5, 1945 herein,—now, therefore, on consideration of the foregoing stipulation

It Is Ordered this 2nd day of April, 1945, that judgment be and the same is entered against the plaintiff and in favor of the United States on its counterclaim in the principal sum of \$2,858.64 with interest thereon at 5% per annum from September 2, 1942 to April 2, 1945, amounting to \$369.27, and interest at 5% per annum on \$5,963.51 from July 12, 1939 to September 2, 1942, amounting to \$937.82, a total judgment of four thousand one hundred sixty-five dollars and seventy-three cents (\$4,165.73), together with interest thereon at 6% per annum from April 2, 1945 until paid.

By the Court, Richard S. Whaley, Chief Justice.

[fol. 37] Clerk's Certificate to foregoing transcript omitted in printing.

Endorsed on cover: File No. 49,890. Court of Claims. Term No. 187. Cherry Cotton Mills, Inc., Petitioner, vs. The United States. Petition for a writ of certiorari and exhibit thereto. Filed July 2, 1945. Term No. 187. O. T. 1945.

[fol. 38] Supreme Court of the United States

ORDER ALLOWING CERTIORARI—Filed October 15, 1945

The petition herein for a writ of certiorari to the Court of Claims is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Jackson took no part in the consideration or decision of this application.